# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 6076 of 1985

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**BASHRI JANAKBA RANJITSINH & 21 - Petitioner(s)**

**Versus**

**STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**

DELETED for Petitioner(s) : 1, 3,6 - 7, 17, 22,
MR PV HATHI for Petitioner(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.7, 1.2.8, 1.2.9, 1.2.10, 1.2.11, 1.2.12, 1.2.13, 1.2.14, 1.2.15, 1.2.16, 1.2.17, 1.2.18, 1.2.19,1.2.20 - 2,4 - 5,8 - 17, 17.2.2,17.2.3 - 22,22.2.2
MS FALGUNI PATEL, AGP for Respondent(s) : 1 - 2.

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 30/01/2006**

**ORAL JUDGMENT**

1.In the present petition, the petitioners have challenged the order dated 9th March 1983 passed by the

Gujarat Revenue Tribunal. By the said order, the Tribunal was pleased to confirm partially the order passed by the Deputy Collector on 28.6.77. The present proceedings pertain to the Gujarat Agricultural Lands Ceiling Act (hereinafter to be referred to as “the said Act”). One Shri Ranjitsinhji Bhursinhji (since deceased) was holding certain agricultural lands in village Vadali of Rajkot district. The present petition concerns a transaction entered into by deceased Ranjitsinhji by which he claimed to have gifted 4 ares of land to one Jamalbhai Nathubhai in the year 1952. The second aspect of the matter is the partition of the property carried out by deceased Ranjitsinhji in favour of several members of his family.

2. For the above two transactions, Ranjitsinhji filed application under section 8 of the said Act before the Deputy Collector seeking a declaration that the said transactions were not made in anticipation in order to defeat the object of the Act. The Deputy Collector passed order on 28.6.77. In the said order, he concluded that no document or other material is produced to establish the gift made in favour of Jamalbhai Nathubhai. With respect to the family

partition, it was observed that the family partition was recorded in the revenue records by entry No.576 dated 23rd December 1975. It was observed that no material is produced to establish that the same was not carried out for the purpose of defeating the provisions of the said Act.

3. The petitioners being aggrieved by the order passed by the Deputy Collector filed revision application before the Gujarat Revenue Tribunal. The Tribunal by its order dated 9.3.83 confirmed the order passed by the Deputy Collector. In the impugned order, the Tribunal observed that the gift made to Shri Jamalbhai Nathubhai was made prior to 24.1.71 and therefore the application with respect to such a gift is legally infructuous. With respect to the family partition, it was noted that rights were given in favour of Nandkunvarba Anirudhsinh, Kishorsinh, Deviyaniba, Kusumba and Pratapba who had absolutely no right to have any share in the property. On account of these reasons, the Tribunal concurred with the view of the Deputy Collector on this issue also.

4. Sub-section (1) of section 8 of the said Act reads as follows:-

"8.(1) Where after 15th day of January, 1959 but

before commencement of this Act, or after 24th day of January 1971, but before the specified date, any person has transferred whether by sale, gift, mortgage, with possession, exchange, lease, surrender or otherwise or partitioned any land held by him, then notwithstanding anything contained in any law for the time being in force such transfer or partition shall, unless it is proved to be contrary, be deemed to have been made in anticipation in order to defeat the object of this Act. Where such transfer or partition was made after 15th day of January 1959 but before the commencement of this Act or in order to defeat the object of the Amending Act of 1972 where such transfer was made after 24th day of January 1971 but before the specified date:

Provided that where any transfer or partition of land is effected by a document required by law to be registered which is however not registered and such document, purports to have been executed before 24th day of January 1971 no court shall pass a decree in any suit filed for the grant of specific relief on the basis of any such document unless the court is satisfied on merits of the case that the document is a bona fide document executed in fact before 24th January, 1971 and that it is not ante-dated as a result of collusion between parties or otherwise in order to defeat the object of the Amending Act of 1972:

Provided further that nothing in this sub-section shall apply to any transfer of land by way of gift or partition made on or after the 24th January, 1971 to a son who was major on the said date."

It can thus be seen that in case of any transaction whereby land has been transferred by way of sale, gift, mortgage with possession, exchange, lease, surrender or otherwise or partitioned, a legal presumption arises that the same was made in anticipation in order to defeat the object of the Act unless otherwise proved, if such

transactions take place after 24.1.72 but before the specified date.

5. In the present case, it has been consistently the case of the petitioners that both transactions took place long before 24.1.71. In fact, it is the case of the petitioners that the land was gifted to Jamalbhai Nathubhai in the year 1952. The Tribunal also observed that since the gift was prior to 24.1.71, application in respect of such a gift is legally infructuous. Regarding the family partition also, it has been the case of the petitioners that the partition took place prior to 24.1.71. Neither the Deputy Collector nor the Tribunal recorded the date on which the partition took place. In any case, because the entry was made on 23.12.75, the same would not mean that the partition took place on that date. The case of the petitioners was that the partition had taken place long before 24.1.71. Thus according to the petitioners, both these transactions took place well before 24.1.71. Application under section 8(1) of the said Act with respect to these transactions therefore was misconceived. The Deputy Collector could have granted or refused to grant certificate as envisaged

under section 8(1) of the said Act with respect to these transactions only if they are made after 24.1.71. When the petitioners themselves contended that the said transactions were not made after 24.1.71, their applications were legally not tenable. In that view of the matter, this petition is disposed of by declaring that the application made by the petitioners with respect to the above two transactions under section 8(1) of the said Act was not tenable. Any observations made by the Deputy Collector or the Tribunal in this regard would be of no consequence. It would be open for the authorities under the said Act to examine the legality of the above transactions while processing the case of deceased Ranjitsinhji for ascertaining the extent of excess agricultural land under section 6 of the said Act.

6. With the above observations and directions, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)